

1 THOMAS D. DILLARD, JR., ESQ.
Nevada Bar No. 006270
2 STEPHANIE A. BARKER, ESQ.
Nevada Bar No. 003176
3 OLSON CANNON GORMLEY & STOBERSKI
9950 West Cheyenne Avenue
4 Las Vegas, NV 89129
(702) 384-4012 - telephone
5 (702) 383-0701 - facsimile
Email: tdillard@ocgas.com
6 sbarker@ocgas.com
7 *Attorneys for Defendants Clark County,*
Jason Allswang, Stephanie Clevinger, Tiffany Bonnell,
8 *and The Animal Foundation*

9
10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 KIMBERLY TERESE ASKEW,)
)
13 Plaintiff,)
)
14 vs.)
)
15 CLARK COUNTY, NEVADA; CHIEF JASON)
16 ALLSWANG, in his individual capacity;)
17 OFFICER STEPHANIE CLEVINGER, in her)
18 individual capacity; OFFICER TIFFANY)
19 BONNELL, in her individual capacity;)
20 DETECTIVE SANDRA SOUTHWELL, in her)
21 individual capacity; THE ANIMAL)
FOUNDATION; and DOES I through XXV,)
)
22 Defendants.)
)

CASE NO: 2:18-cv-02026-APG-BNW

**STIPULATION AND ORDER RE:
RULE 35 PSYCHOLOGICAL
EXAMINATION OF PLAINTIFF
AND EXTENSION OF EXPERT
DISCLOSURE DEADLINES
ACCORDINGLY**

22 IT IS HEREBY STIPULATED AND AGREED, by and between Defendants CLARK
23 COUNTY, JASON ALLSWANG, STEPHANIE CLEVINGER, TIFFANY BONNELL and
24 Defendant THE ANIMAL FOUNDATION (collectively the "CLARK COUNTY DEFENDANTS")
25 through their attorneys THOMAS D. DILLARD, JR., ESQ. and STEPHANIE A. BARKER, ESQ.
26 of the law firm of OLSON CANNON GORMLEY & STOBERSKI, and by Defendant SANDRA
27 SOUTHWELL through her attorney LYSSA S. ANDERSON, ESQ. of the law firm KAEMPFER
28 CROWELL, and by Plaintiff KIMBERLY TERESE ASKEW through her attorney PAOLA M.

1 ARMENI, ESQ., of the law firm CLARK HILL, that an FRCP Rule 35 Examination of Plaintiff
2 KIMBERLY TERESE ASKEW may be conducted as follows:

- 3 1. The Independent Psychological Examination (IPE) will be conducted by Dr.
4 Lewis M. Etcoff, Ph.D., at his offices located at 8475 S. Eastern Avenue, Suite
5 #205, in Las Vegas, NV, 89123.
- 6 2. Plaintiff KIMBERLY TERESE ASKEW, will present herself to Dr. Etcoff's
7 offices for completion of questionnaires and testing on February 11, 2020,
8 commencing at 1:30 p.m., for approximately three hours.
- 9 3. Plaintiff KIMBERLY TERESE ASKEW, will present herself to Dr. Etcoff's
10 offices for examination with Dr. Etcoff on February 18, 2020, from 9:00 a.m. to
11 5:00 p.m. The examination will encompass the full day, with a lunch break of one
12 hour and fifteen minutes, and several breaks of 10-15 minutes throughout the day,
13 as necessary.
- 14 4. In compliance with FRCP 35(a)(2)(B), the manner, condition, and scope of the
15 examination as described by Dr. Etcoff, will be as set forth in the attached Exhibit
16 "A" – "Scope of a 1 Day Evaluation." This statement is not intended to limit
17 reasonable and relevant questioning by Dr. Etcoff which in his professional
18 judgment is reasonable and necessary to a complete evaluation, depending upon
19 the nature and scope of the information learned during the examination.
- 20 5. The report prepared by Dr. Etcoff in accordance FRCP Rule 35 will be titled as
21 "Report Regarding Rule 35 Examination."
- 22 6. The examination and interview of Plaintiff by Dr. Etcoff will be subject to audio
23 recording as though performed in accordance with Nevada Rule of Civil
24 Procedure 35(a)(3); the recording will be an audio recording only, and as the party
25 requesting the recording, Plaintiff must arrange and pay for the recording and
26 provide a copy of the recording to defense counsel of record for the Clark County
27 Defendants, and to defense counsel of record for Defendant Southwell.
28

1 7. Dr. Etcoff will refrain from inquiry into "liability" in this matter as liability
2 determinations call for legal conclusions to be made by the court and/or factual
3 conclusions to be made by the trier of fact.

4 8. It is the Clark County Defendants' intention to have Dr. Etcoff inquire as to
5 Plaintiff's claim that her recent diagnosis of breast cancer is correlated to this
6 suit. Plaintiff's agreement to allow Dr. Etcoff to do an independent psychological
7 evaluation should not be construed as a waiver of any right to object to any
8 findings and/or opinions of Dr. Etcoff.

9 9. To accommodate the foregoing February 2020 examination dates, as the next
10 available dates on Dr. Etcoff's calendar, the parties agree that it is appropriate to
11 extend discovery deadlines as to experts only. As to all other issues the discovery
12 deadline will remain on April 7, 2020. As to the expert discovery, the parties
13 stipulate to extend the existing dates by 30 days as follows:

14 **March 9, 2020:** Initial Expert Disclosure Due

15 **April 9, 2020:** Rebuttal Expert Disclosure Due

16 **May 11, 2020:** Expert Discovery Deadline

17 10. Dr. Etcoff's Rule 35 Report will be produced by the revised Initial Expert
18 Disclosure Due date of March 9, 2020.

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1 Upon agreement by and between all the parties, the undersigned respectfully request that this
2 Court Order that a Rule 35 Psychological Examination of Plaintiff KIMBERLY TERESE ASKEW
3 be conducted on the terms and conditions set forth hereinabove, and that the Expert Disclosure
4 Deadlines in this mater be extended as set forth herein.

5 DATED this 7th day of January, 2020.

DATED this 7thday of January, 2020.

6 CLARK HILL, PLLC

OLSON CANNON GORMLEY &
STOBERSKI

7 /s/ Paola M. Armeni

/s/ Stephanie A. Barker

8 PAOLA M. ARMENI, ESQ.

THOMAS D. DILLARD, JR., ESQ.

9 Nevada Bar No. 8357

Nevada Bar No. 6270

3800 Howard Hughes Pkwy., Ste. 500

STEPHANIE A. BARKER, ESQ.

10 Las Vegas, Nevada 89169

Nevada Bar No. 003176

parmeni@clarkhill.com

9950 West Cheyenne Avenue

11 *Attorneys for Plaintiff*

Las Vegas, NV 89129

tdillard@ocgas.com

sbarker@ocgas.com

Attorneys for Defendants Clark County,

Jason Allswang, Stephanie Clevinger,

Tiffany Bonnell, and The Animal Foundation

12
13 DATED this 7th day of January, 2020.

14 KAEMPFER CROWELL

15 /s/ Lyssa S. Anderson

16 Lyssa S. Anderson, Esq.

17 Nevada Bar No. 5781

Ryan W. Daniels, Esq.

18 Nevada Bar No. 13094

1980 Festival Plaza Drive, Ste. 650

Las Vegas, Nevada 89135

landerson@kcnvlaw.com

rdaniels@kcnvlaw.com

20 *Attorneys for Defendant Sandra Southwell*

21 **IT IS ORDERED that ECF No. 62 is**
22 **GRANTED. IT IS FURTHER ORDERED**
23 **that the parties must file a joint status**
24 **report by January 13, 2020 stating**
25 **whether ECF Nos. 46 and 47 are now**
26 **moot.**

IT IS SO ORDERED:

DATED: 1/8/2020



UNITED STATES MAGISTRATE JUDGE

EXHIBIT “A”

EXHIBIT “A”

Lewis M. Etcoff, Ph.D., A.B.N.

Nevada Licensed Psychologist No. 129
Diplomate, American Board of Professional Neuropsychology #257
Fellow, National Academy of Neuropsychology
Fellow, The American College of professional Neuropsychology

PERSONAL INJURY FORENSIC PSYCHOLOGICAL EVALUATION

Scope of a 1 Day Evaluation

Forensic psychological examinations in a personal injury context are essentially a pre-post comparison, examining the effects of a particular event on the plaintiff's functioning.

Whether I am retained by Plaintiff's Attorney or Defendant's Attorney, my job is identical – to objectively evaluate whether and to what extent the subject incident caused the plaintiff to experience acute or chronic emotional, cognitive, behavioral, interpersonal, or work-related injuries, i.e., symptoms or problems.

The examining psychologist considers the plaintiff's functioning at five points in time: (1) Prior to the subject incident; (2) on the day of the subject incident and over the next several weeks; (3) from several weeks after the subject incident up to the day of the forensic psychological evaluation; (4) on the day of the forensic psychological evaluation; and (5) into the future (to the extent the future functioning can be validly projected).

To gather valid information regarding the plaintiff's functioning at these five points in time, I employ three distinct information-gathering methods: (1) A several-hour face-to-face interview with the plaintiff; (2) the use of objective psychological tests to measure the plaintiff's symptoms, traits, and characteristics; and (3) the review of case records supplied by the attorney.

The several-hour face-to-face interview affords the plaintiff the opportunity to describe his/her perceptions of the subject incident, the context in which it occurred, and the physical, mental, cognitive, and emotional impairments that may have resulted. The interview also addresses current life stressors that may be responsible for causing or maintaining the plaintiff's current symptoms or impairments in functioning. The interview covers a very broad range of topics, ranging from topics relevant to pre-subject incident history and topics relevant subsequent to the subject incident. The interview enables me to ascertain how substantial and genuine the plaintiff's complaints are and whether the plaintiff's injury claims are proximately caused by the subject incident or whether other non-subject incident factors caused the plaintiff's perceived injuries.

Records I may review prior to interviewing the plaintiff can include traffic accident reports, at-the-scene ambulance records, hospital records, physician/chiropractic/various therapists' records, work records, etc.

One to two weeks before the interview with Dr. Etcoff, the plaintiff will be scheduled to complete two objective psychological tests which measure a variety of psychological and psychiatric symptoms that the plaintiff may be currently experiencing (whether or not these symptoms are wholly, partially, or not at all related to the subject incident). Dr. Etcoff will choose either the Minnesota Multiphasic Personality Inventory – 2 (MMPI-2) or Minnesota Multiphasic Personality Inventory – 2 – Restructured Form (MMPI-2-RF) and one other objective psychological test – the Personality Assessment Inventory (PAI), Millon Clinical Multiaxial Inventory – IV (MCMI-IV), or Battery for Health Improvement – 2 (BHI-2). The choice of which tests is dependent upon the claims made by the plaintiff. All of these tests formulate descriptive statements of the plaintiff's present psychological functioning. To help me determine which test results are accurate, I

Personal Injury Forensic Psychological Evaluation
Scope of a 1 Day Evaluation
December 10, 2019
Page 2

review the test results with the plaintiff and ask the plaintiff whether the descriptive statements in the tests are very accurate, somewhat accurate, or inaccurate. I compare the plaintiff's opinions of the descriptive statements to the case records and his/her emotional, behavioral, and cognitive presentation.

The two objective psychological tests can be scheduled by the attorneys from 1:30 a.m. to 5:00 p.m. Monday through Thursday at my office either the week of the psychological interview or the week before the psychological interview. The tests take anywhere from 2½ to 3½ ours to complete. The tests are also available on audiotapes if reading may be difficult for the examinee. The tests are also available on audiotape and in written form in the Spanish language. The plaintiff takes each of the psychological tests alone in a room in my office suite.

The psychological interview begins at 9:00 a.m. I usually provide a 10-minute rest break each hour and a 75-minute lunch break from noon to 1:15 p.m.

During the interview, I most often have an associate (another licensed psychologist in my group who has reviewed the plaintiff's case records) participate in the examinee's interview. Both of us take written notes, which include the questions asked and the answers to each question. On occasion, an examinee will request that the interview be audiotaped. I have no problem with audiotaping the examinee's interview. I would ask that the audiotaping be done professionally and that a copy of each audiotape is given to each attorney, who then may choose to transcribe the interview. If transcribed, each attorney should receive a copy of the interview transcription in order to maintain complete transparency.

I typically dictate the interview and psychological test results over the next several days. The other psychologist involved in the case reviews my dictation to make sure that my report accurately reflects the substance of what was stated in the interview. I typically complete my written report within 10 working days, at which time I mail my report to the attorney who retained me. That attorney is responsible for sending my report to the attorney on the other side of the case.

The attorney who did not retain my services may (and typically does) depose me under oath in order to determine more substantively how I reached my case conclusions. The vast majority of personal injury lawsuits settle without a court trial. If a case does go to trial, I can be subpoenaed to testify at trial as an expert witness by either attorney. The attorney who does not subpoena me to testify retains the right to cross-examine me.

Last but not least, unlike seeing a psychologist for counseling or psychotherapy where all information is private and confidential, in a forensic psychological evaluation none of the information is private or confidential.


Lewis M. Etcoff, Ph.D., ABN

Diplomate, American Board of Professional Neuropsychology
Fellow, National Academy of Neuropsychology

LME/jhs
T: 12/10/19